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COMMISSION ON HUMAN RIGHTS
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Item 7 of the provisional agenda

THE RIGHT TO DEVELOPMENT

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

Protection of the right to development

1. The right to development, reaffirmed at the previous session of the Commission on Human Rights by resolution 1999/97 of 26 April 1999, is contravened not only by the structures of international trade and the nature of this trade, which lies at the root of the debt problem, but also by the legal rules imposed by industrial countries.

2. Thus, for example, the right to foreign investment only guarantees protection for the interests of the investor and takes no account of the interests of the countries which have been "invested in". When disputes arise, arbitration establishes a jurisprudence that consistently favours the investor.

3. The law of international patents also violates the right to development and the public interest, as stated in World Health Assembly resolution WHA52.19 of 22 May 1999 (Revised drug strategy).

4. The efforts of the United States and the industrial powers to allow transnational firms to acquire a legal status similar to that of States (as was the case with the fortunately abortive draft Multilateral Agreement on Investment) are attempts to openly thwart the right to development which, by contrast, insists on an equitable distribution of the world's gross domestic product (GDP) as emphasized by the United Nations Development Programme (UNDP) in its annual Human Development Report, thereby making it possible to realize the concept of a "global commonality". The example of water is revealing: the Secretary-General stated in June 1997 that "current water resources-use patterns are for the most part unsustainable". This is why one out of five people in the South does not have access to safe drinking water while water is squandered in industrial countries. An American consumes 900 litres of water a day; an African just 30.

5. The right to development can only be exercised through the protective and equitable management of resources, an "active and democratic multilateralism" contrasting with "classical" Western international economic law which merely serves the economies of the developed countries.

6. The Commission on Human Rights is thus justified in taking steps to prepare a schedule of international legal standards with a view to exposing their contradictions and thereby helping to forge a coherent and undistorted legal system favourable to human rights, the only effective means of exercising the right to development.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

ISRAELI WITHDRAWAL FROM THE OCCUPIED TERRITORIES, THE RELEASE OF PRISONERS AND THE RIGHT TO RETURN

1. For half-a-century, the Israeli State, with the support of the United States, has been able to ignore United Nations resolutions, openly violate international law and impose its wishes on the Palestinian people and neighbouring Arab peoples.

2. Since 1993, talks between the Israelis and the Palestinians have been deadlocked, and effective recognition of the rights of the Palestinian people has not been forthcoming. The Palestinian Authority has merely illusory power. Israeli settlements have been built up, Palestinian "refugees" in exile have not been able to return to their lands and the Palestinian militants in prison are still locked up. In defiance of Security Council resolution 242, Jerusalem is still occupied by force. The Palestinian people, under foreign occupation since 1949, has never benefited from the "humanitarian intervention" so loudly proclaimed when it suits the great Powers' strategy.

3. The compromises forced on the Palestinian people have negated all the work of the United Nations on behalf of Palestine and rendered meaningless the basic principles of international law: the equal sovereignty of States, the right to self-determination, human rights, etc. Because of the deteriorating situation, everything possible is done to make Palestine a "sub-State" permanently policed by Israel, with the assistance of the United States.

4. The Palestinians in Israel themselves have to endure discriminatory measures and the Israeli authorities exploit and deepen their divisions (the tribal structures of rural Muslim and Christian communities) and set "minorities" (particularly the Druze) against each other. The proletarianization of the Arab population of Israel gives rise to a sort of "internal immigration" that the privileged Jewish classes can take advantage of. This exploitation comes on top of that of Palestinian workers in underpaid jobs with Israeli firms in the occupied territories.

5. The endless impunity enjoyed by the State of Israel must be condemned. Otherwise, condemnations for violations of human rights and the rights of peoples in other parts of the world become totally meaningless and only serve as examples of the practice of double standards.

6. The Commission on Human rights should invite all special rapporteurs and thematic mechanisms, within their respective mandates, to focus on the negative effects and consequences of the unilateral coercive measures used against the Palestinian people.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

GE.00-10960 (E)

THE SITUATION IN SOUTHERN LEBANON

1. One hundred and forty-four Lebanese political prisoners are imprisoned in Khiam camp, set up in 1985 by the Israeli army occupying southern Lebanon, for acts of resistance against a foreign military force occupying the national territory since 1978.

2. These Lebanese prisoners have not been allowed the benefit of any legal procedure or trial by the State of Israel, which claims to be the "only democracy" in the Middle East.

3. Requests for their release or simply for a visit from lawyers, sent to Mr. Barak, the head of the Israeli Government, have gone unanswered.

4. The group of French and Israeli lawyers representing prisoners held in Khiam stress that their clients are subjected to "harsh torture and other inhuman and degrading treatment".

5. There are therefore grounds for requesting that the relevant special rapporteur should study conditions in Khiam camp and that everything possible should be done to obtain the release of those illegally imprisoned there.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

War crimes in Chechnya

1. The great Powers endorse the implosion of States when they prove troublesome and crush peoples whose wish to affirm their identity becomes a threat to great-Power strength. The Western Powers have contributed to the break-up of Yugoslavia and the dismantling of Serbia in the name of the rights of the people of Kosovo. The Government of the Russian Federation, taking advantage of the de facto inertia of the United States, is crushing Chechen national aspirations in the name of the unity of the Russian Federation.

2. In both cases, the great Powers are using armed force to deal with their own domestic problems. It is the custom of the President of the United States to manipulate public opinion through international operations in order to bolster his authority. The Government of the Russian Federation, taking its cue from the American "model", is strengthening its prestige by pandering to Russian chauvinism, prompted by electoral necessity. Small peoples pay the price of this posturing.

3. The great Powers have adopted the same "model" of war. The war waged by the Western armies in Kosovo was based on the idea of "zero casualties". The aim is to reduce the risks to oneself by remote strikes against an enemy who cannot hit back: the Iraqi and Serbian peoples have thus been attacked by Western armed forces which have sustained no casualties. The Chechen people has been attacked by Russian armed forces using the same methods.

4. This strategy neutralizes domestic opinion in the great Powers (the principal danger being rebellion), but provokes massive destruction and heavy civilian casualties in bombed areas. The bombing of Iraqi cities is continuing. The same treatment was subsequently meted out to Belgrade and Grozny. Targets with major economic and social significance have been destroyed, setting back the level of development by decades. Humanitarian law has been consistently violated, paradoxically in the name of protecting human rights (invoked by the United States and its allies in Kosovo) or fighting terrorism (invoked by the Russian Federation in Chechnya).

5. The Commission on Human Rights should take account of this new approach to warfare ("zero deaths"), which is inevitably responsible for war crimes and crimes against humanity as defined in the Statute of the International Criminal Court. It should also condemn the abuse of humanitarian rhetoric which discredits the very concept of human rights, hijacked by the great Powers to serve their interests. A resolution condemning these practices, which have led to tens of millions of civilian deaths, is indispensable if resolutions generally dealing with lesser problems are to be taken seriously.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by North-SouthXXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

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* This written statement is issued, unedited, as received from the submitting non-governmental organization.

GE.00-10968 (E)

Violation of human rights in Equatorial Guinea

1. Since 1974, when the victims of the repressive regime in Equatorial Guinea appeared for the first time before the Commission on Human Rights to condemn the offences being committed against the people of that country, several associations and bodies have strongly condemned, year after year, the constant deterioration in the situation with regard to all rights in that central African country, whether the civil and political rights so dear to the West or the economic, social and cultural rights essential to the survival of the peoples of the South.

2. The 1979 coup d'état, which overthrew dictator Macias Nguema and placed his nephew Obiang Nguema in power, and the promise of democratization held out to Africa in the 1990s seemed capable of influencing the totalitarian regime in place in the former Spanish colony, which became independent in 1968.

3. Quite the opposite was true. Now that the country's immense oil resources have begun to be developed, a re-emergence of State violence and an increase in repressive police practices are being observed, completely out of proportion to the situation in neighbouring countries such as Gabon.

4. Opponents of the regime, including former associates of the regime in power, are relentlessly pursued and physically eliminated. In 1997 the Malabo authorities, with the complicity of the Gabonese presidential guard and in disregard of all the rules of humanitarian law, organized the abduction of three former ministers who had taken refuge in Libreville, including Julio Ela Mangue, former Minister of the Interior, and Guillermo Nguema Obama, former Minister of Finance. In 1998, the former Minister of the Economy, Felipe Hinextrosa Ikaka, who was instrumental in setting up the Equatorial Guinea offices of the International Bank for West Africa (BIAO) and in the Bank's conversion, died under circumstances which have not been elucidated.

5. Other leading officials of the Equatorial Guinea administration met the same fate in 1999, in particular Antonio Nculu Oyé, former Director General of the Ministry of Culture, who had become President of the National Commission responsible for supervising elections. The most flagrant case concerned the murder of a former diplomat, the first ambassadeur of Equatorial Guinea in Paris, Mr. Julian, by a well-known member of the President's inner circle, nicknamed "Effe Poulet". In Burkina Faso the murder of a journalist destabilizes the Government, but in Equatorial Guinea repeated crimes against senior officials do not cause a stir. That is how strong the Government is, and how pitiless the repression.

6. In Parliament, the PDGE (Parti Démocratique de la Guinée Equatoriale), the party in power, occupies 71 of the 75 seats in the National Assembly. Even in the legal sphere, the Government permits no form of protest. The opposition parties are systematically hounded and their members arrested and stripped of their jobs. Dr. Wenceslao Alogo Mansogo, a surgeon who had recently completed his training in French universities, was dismissed from the public health sector. He is a member of Convergence pour la Démocratie Sociale (CPDS), a party which opposes Equatorial Guinea's repressive regime.

7. The country's wealth, especially its lucrative oil resources, are distributed among the members of the President's family and the French and American oil companies which divide up Equatorial Guinea's oilfields.

8. The upsurge of extreme poverty in the country has driven thousands of teenagers to emigrate to Spain, where they practise various forms of prostitution under humiliating conditions in order to help their relatives back home.

9. The ambiguous actions of the Western Governments to which Equatorial Guinea is linked through its oil, or its history, as in the case of Spain, merely strengthen the totalitarian practices of the Malabo regime and reinforce the authorities' feeling that they may take any action with impunity. For at stake are some lucrative contracts for cooperation and the establishment of joint enterprises, such as the recently signed cooperation agreements of November 1999 between the Equatorial Guinea Minister for Foreign Affairs and the Assistant Director-General of the Spanish Ministry of Foreign Affairs.

10. In view of the fact that the rights of an entire people are being violated, the Commission on Human Rights should take the necessary urgent measures to ensure that minimum standards of law, if only humanitarian law, may prevail in this part of the world, where the existence of NGOs is not even contemplated.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement submitted by North South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

GE.00-10727 (E)

The question of violations of the human rights of Lebanese civilians perpetrated by Israel in Lebanon

1. After Israel's invasion of Lebanon in March 1978, the United Nations Security Council passed resolution 425 (1978) calling on Israel to "immediately cease its military action against Lebanese territorial integrity and withdraw forthwith its forces from all Lebanese territory". Today, some 22 years since the passing of that resolution, Israel, in defiance of international laws and in defiance of repeated international condemnation of its actions, continues illegally to occupy approximately 10 per cent of Lebanese territory, comprising hundreds of towns and villages in the south of Lebanon. Israel also maintains a contingent of approximately 2,000 Israeli army regulars and 1,500 Israeli-supported militia in south Lebanon.

2. Israel continues to commit large-scale human rights abuses against the civilian population of Lebanon. On a near daily basis, it conducts air strikes on Lebanese villages and cities, sometimes sending hundreds of thousands of Lebanese civilians into flight from their homes. The Israeli Defence Force (IDF) conducts military offensives in areas of Lebanon well beyond the zone it occupies. Israeli intelligence agents carry out targeted assassinations of Israel's perceived opponents throughout Lebanon. Israel maintains a prison in Khiam, Lebanon, which it has used for the indefinite imprisonment and torture of Lebanese political prisoners since 1985, and for which it has come under escalating international condemnation because of the gross violations of the human rights of the detainees held there, many of whom have died as a result of torture while in custody.

3. The United Nations forces in Lebanon have not only borne witness to Israel's atrocities against Lebanese civilians, but they have also been the direct target of Israeli attacks, especially where they attempted to protect or rescue civilians. One specific incident in point is the massacre at Qana, Lebanon, on 18 April 1996. Shortly after 2.00 p.m. local time that day, the IDF began an artillery bombardment of the headquarters compound of the Fijian battalion of the United Nations Interim Force in Lebanon (UNIFIL) in Qana. At the time, approximately 800 Lebanese civilians were being sheltered inside the compound. Over 100 civilians were killed and scores more, along with UNIFIL troops, were injured. The IDF artillery unit that fired on the UNIFIL base was positioned inside of Lebanon.

4. Israel denied that it intended to kill civilians when it shelled the UNIFIL compound in Qana. However, an investigation of the incident conducted by Major-General Franklin van Kappen, Military Adviser to the former Secretary-General of the United Nations, Boutros Boutros Ghali, found that it was "unlikely that the shelling was the result of gross technical or procedural error". The critical facts that led General van Kappen to this conclusion were: (1) the pattern and distribution of impacts, which showed the majority of shells falling on or in the immediate vicinity of the buildings in the compound; (2) the perceptible shift in the weight of fire from an initial barrage that fell on the mortar site to a second barrage that fell on the United Nations compound; and (3) that there were two Israeli helicopters and a remotely piloted vehicle (drone) flying above the Qana area at the time of shelling.

5. Approximately two thirds of the shells used were proximity-fuse which explode above the target, spreading huge sheets of shrapnel. Because of the type of ordnance employed, many of the civilians sheltering inside the compound were torn to pieces, some were decapitated and burnt beyond recognition. Fifty-two of the dead were Lebanese children.

6. Evidence that the attack was deliberate is abundant. The Director of Israeli Artillery, Brigadier General Dan Harel, confirmed in an interview on CNN on 7 May 1996 that the Israeli Defence Forces had been informed by UNIFIL only two days prior to the incident that there were some 5,000 to 9,000 refugees sheltering in UNIFIL bases in the area. UNIFIL spokesperson Timor Goksel told the press that he had informed the IDF that civilians were sheltering in UNIFIL bases. Major General Moshe Ya'alon, the head of IDF intelligence, also confirmed that Israel was fully aware that civilians were sheltering on the base.

7. Israel adamantly denied that it had a drone or surveillance aircraft over Qana until The Independent, a British newspaper, reported that a videotape had been made by a United Nations soldier at a base nearby depicting a drone over Qana during the shelling. Drones are typically used to guide gunners in firing at objectives that they cannot otherwise see. Thereafter, Israel admitted to the presence of a drone, but claimed it was on "another mission". Israel then released only 4 minutes of the 50 minutes of videotape that it possesses taken by its drone. The release of that footage indicates that the drone was successfully transmitting images of the scene. The fact that the IDF had a drone over Qana at the time it was firing artillery at the United Nations compound indicates that it was using the drone to determine where to fire, and it was able to see where each shell fell.

8. Additional evidence that the shelling was deliberate is that, according to UNIFIL officials, the IDF was repeatedly informed by telephone that it was shelling civilians. UNIFIL officials told the press that only one or two minutes into the barrage, they contacted Israel and informed it that its forces were shelling their base. For at least 11 to 12 minutes after the initial UNIFIL contact was made, the IDF continued to fire artillery at the base despite continued frantic requests by UNIFIL to cease fire.

9. The report by Major-General van Kappen confirms that the orders to fire came from Israeli officers of some level of seniority. Under intense political pressure from Israel and the United States, the United Nations dropped the investigation and never revealed to the public the underlying evidence and findings upon which the van Kappen report was based. No final report on the Qana massacre was ever published.

10. The Qana massacre is only one of a multitude of incidents constituting persistent and gross violations of the human rights of Lebanese civilians perpetrated by Israel. It is also one instance where the United Nations possesses or controls the evidence necessary to establish Israel's responsibility for these violations.

11. A compelling reason for the United Nations to reopen the investigation of the Qana massacre is that it has in its possession or control key evidence surrounding the massacre - its very forces in fact conducted the principal investigation in the immediate aftermath. Only the

United Nations is privy to that evidence. Moreover, the massacre occurred on a United Nations base and United Nations troops and personnel were fired on. And, as the evidence establishes, those United Nations troops were fired on intentionally.

12. Israel must be found responsible for its violations of international law and its human rights abuses of Lebanese civilians. These violations include violations of the guarantees of the right to life under the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and other instruments, the protection of civilians from attack guaranteed under humanitarian law including the Geneva Conventions of 12 August 1949 and the Protocols Additional thereto; the prohibition against torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other instruments, and the prohibition against genocide under the Convention on the Prevention and Punishment of the Crime of Genocide.

13. For legal and moral reasons, the United Nations must act in this matter on behalf of its own soldiers, and on behalf of the Lebanese civilians who were murdered while in the custody and under the protection of UNIFIL soldiers, on territory clearly demarcated as a United Nations base. The effectiveness and, indeed, relevance of the United Nations and its human rights agencies will be measured not by how eloquently it articulates its principles - but rather by how it puts them into practice.

Our recommendations to the Commission on Human Rights

14. We request that the Commission appoint a special rapporteur to conduct a thorough investigation into the Qana massacre, and into other gross violations of human rights and international law by Israel in Lebanon including, inter alia, the attack on the UNIFIL compound in Mazdal Zoun a few days prior to the Qana massacre; the deliberate targeting of civilian homes, vehicles and ambulances, including an incident in Mansuri, Lebanon, in which an Israeli helicopter gunship attacked an ambulance, killing two women and four children; and the forced evacuation of hundreds of thousands of civilians from their homes in south Lebanon.

15. We request that the Commission issue a full and complete report of Israel's legal responsibility for the above-mentioned abuses as well as those that are ongoing, and determine appropriate modes of reparations, as well as specific measures to ensure against further violations of international law and human rights by Israel in Lebanon.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

GE.00-10972 (E)

Critical follow-up of global negotiations within the framework of the World Trade Organization (WTO)

1. Human rights cannot be exercised effectively and democratization will continue to be an empty phrase until the world's gross domestic product (GDP) is distributed equitably.

2. WTO, the creature of the great Powers, claims that it can guarantee respect for economic and social rights by establishing a free-trade regime and throwing open all markets without restriction. The social aspirations of the countries of the South will be met through comprehensive integration into the world economy.

3. The way that WTO works at present favours the industrial countries and, among the States of the South, only the "emerging economies", as the Seattle Conference clearly showed. It does not take account of the discriminatory logic of investment policies based solely on security and profitability, and it glosses over the "financialization" of the economy resulting in the decline of real material production, to be replaced by a speculative and parasitical system that aggravates unemployment and is completely indifferent to the poor. The transnational social movement organized by critical non-governmental organizations (NGOs) which crystallized around the Seattle Conference, rejects this transformation of the world into a vast market with a monopoly on the ability to guarantee genuine respect for economic, social and cultural rights.

4. The alternative declarations of these critical NGOs, such as the final statement of the World Summit for Social Development in 1995, are reference documents for the Commission on Human Rights and the promotion of economic, social and cultural rights. The Commission on Human Rights should do everything in its power to help resolve the contradiction between the principles and current mode of operation of WTO and the promotion of economic, social and cultural rights.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

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GE.00-10976 (E)

IMMUNITY IN CASES OF VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. Commission on Human Rights resolution 1999/58 of 28 April 1999 is an important step in the necessary process of upgrading economic, social and cultural rights from the legal and political standpoints. The fifty-sixth session of the Commission on Human Rights should be the occasion to intensify this process of affirming the indivisible nature of human rights, be they civil and political or economic, social and cultural, in accordance with the 1993 Vienna Declaration.

2. It should be recalled that in 1951 the General Assembly of the United Nations approved the adoption of a single, legally binding covenant on human rights in accordance with the wishes of the drafters of the Universal Declaration of Human Rights, which in its preamble states that "oppression" and "want" are two equal sources of human rights violations.

3. One cannot help but notice that human rights have been organized into a hierarchy at the insistence of western States, which have imposed a narrow interpretation limited to civil and political rights. It is noteworthy that the United States has not ratified the 1966 International Covenant on Economic, Social and Cultural Rights. According to the neoliberal way of thinking, there is no need to incorporate in law something that should depend on the market alone. In fact what happens is that economic freedom and its practical consequence, the concentration of firms, weaken the State and undermine economic and social rights. Whereas the major powers have invented "humanitarian intervention" with the official aim of safeguarding civil and political rights, they have not gone so far as to advocate "social intervention" to combat, for example, the widespread violation of trade-union freedoms or to guarantee people's right to housing, health or education. On the contrary, some United Nations agencies, such as the International Monetary Fund (IMF), actually "organize" the reduction or suppression of social rights in their structural adjustment programmes. Mexico, for example, after 14 years of structural adjustment and after joining the North American Free Trade Agreement (NAFTA), has lost 2.2 million jobs, and 40 million people live in abject poverty.

4. The universality of economic and social rights, unlike that of civil and political rights, is not disputed. This unreserved recognition that transcends cultural boundaries should facilitate their implementation and the punishment of those who violate them.

5. However, whereas the International Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia were established to punish crimes against humanity and genocide, and the International Criminal Court is responsible for judging war crimes, impunity in cases of violations of economic and social rights is never questioned, despite the facts presented in the Human Development Report of the United Nations Development Programme (UNDP).

6. Technically speaking, however, it is not impossible to identify violations of economic and social rights or to attribute responsibility for them, including the personal criminal responsibility of the directors of transnational corporations (for example, the directors of oil companies that have seriously damaged the environment and right to health of the Ogonis in Nigeria). International business law could, as in domestic law, be extrapolated to an international criminal business law and an economic criminal court is not inconceivable. A working group should be set up to look at the question of impunity in cases of violations of economic and social rights and to propose practical steps to put an end to it.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF TORTURE AND DETENTION

Written statement submitted by North South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

GE.00-10731 (E)

1. North South XXI would like to bring the case of arbitrary detention and denial of proper medical treatment of world-recognized human rights and indigenous peoples' rights defender Leonard Peltier to the attention of the Commission on Human Rights.

2. Mr. Peltier, a Lakota-Chippewa and lifelong defender of traditional, cultural, civil and human rights of Native peoples, is currently incarcerated at Leavenworth Federal Penitentiary in the United States for a crime he did not commit. He has become a notorious symbol of injustice towards indigenous peoples. His personal testimony of the case is recorded in Commission document E/CN.4/1997/NGO/80.

3. During the official celebration of the fiftieth anniversary of the Universal Declaration of Human Rights in Paris in December 1998, Leonard Peltier was recognized by the world community as a human rights defender. On this occasion several Nobel Peace Prize laureates, religious leaders and human rights NGOs called for the immediate release of Mr. Peltier. Rigoberta Menchú, UNESCO Goodwill Ambassador for a Culture of Peace, was one of those who made such calls.

4. Mr. Leonard Peltier has been arbitrarily held in United States federal prisons for 24 years. The initial investigation, the illegal extradition, the unfair trials, the appeals, the current parole process and the current Executive Clemency campaign have all shown that Mr. Peltier is not, and has never been in prison to pay restitution for a crime. Rather, he has been held in prison for vindictive and political reasons. All domestic remedies to bring justice to Mr. Peltier have been obstructed.

5. The United States admits to being directly responsible for Mr. Peltier's fraudulent extradition from Canada in 1976. They have admitted to preparing and submitting falsified affidavits to Canadian officials, with the participation of the Canadian prosecutor, according to FBI documents. This alone violates treaty protocol, extradition, and international law.

6. Mr. Peltier was then extradited to the United States where he was tried with the denial of due process guaranteed under the United States Constitution and international standards. Since 1986, the United States Government has consistently conceded that they cannot prove who is guilty of the crime he was convicted of, demonstrating once again that Mr. Peltier is being arbitrarily detained. The courts have utterly failed to bring him justice.

7. In November 1993 former United States Attorney-General Ramsey Clark filed a petition for Executive Clemency at the White House on behalf of Mr. Peltier. On average a review of such a petition is completed in six to nine months and rarely does it take longer than two years for one to receive a response. However, it has been almost seven years since Mr. Peltier's petition was filed and the President has not yet responded.

8. Additionally, Mr. Peltier has been held eight years in excess of the United States Parole Commission's own guidelines for release. The Parole Commission set his next parole hearing for the year 2008, 17 years in excess of the Parole Commission's release guidelines and six years after the date set by Congress for the total abolition of the Parole Commission itself. The reasons the Parole Commission has given for denying him parole have been arbitrary, capricious,

discriminatory, and in violation of his civil and human rights. Such practice can be considered a clear form of arbitrary detention in violation of the International Covenant on Civil and Political Rights.

9. Furthermore, Mr. Peltier's health continues to deteriorate as a result of the prison authorities' denial of proper medical treatment. If Mr. Peltier does not receive immediate medical treatment, his health condition will further deteriorate into a life-threatening situation. One can easily interpret the terrible health condition that Mr. Peltier has been forced to endure for many years as cruel and unusual punishment for a crime he did not commit. To allow him to remain in excruciating pain for the last four years can also be considered a form of torture.

10. Additionally, the Federal Bureau of Prisons recently stated that Mr. Peltier is suffering from "diabetes, a cardiac condition, and hyperlipedemia". He has suffered from a stroke in the past making these conditions very serious. Leonard Peltier has also lost 80 per cent of the vision in his left eye as a result of the prison authorities' failure to provide prompt and necessary medical treatment. Prison medical staff have recommended treatment for a prostate condition, yet treatment has not been administered.

11. By denying Mr. Peltier appropriate medical treatment, the United States prison authorities are violating the Universal Declaration of Human Rights (art. 5), the International Covenant on Civil and Political Rights (art. 7), the United Nations Standard Minimum Rules for the Treatment of Prisoners (part 1, rule 22 (2)), and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 1).

12. Torture and Cruel, Inhuman or Degrading Treatment or Punishment are outlawed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Every State is bound by the prohibition against torture as a matter of jus cogens. Nevertheless, torture of persons in detention persists, most often for persons arbitrarily detained for political reasons.

13. On 2 November 1998, the United Nations Special Rapporteur on torture sent an urgent appeal on behalf of Mr. Peltier and this case has been included and underlined in his 1999 report (E/CN.4/1999/61). The Special Rapporteur has stated that the case of Mr. Peltier continues currently to concern him.

14. Other than Mr. Peltier, thousands of prisoners in the United States do not receive adequate care for serious physical or mental health problems, according to several human rights NGOs' reports. Many of these practices violate United States laws as well as international human rights standards, but the mechanisms available to prevent abuses and provide redress are inadequate. International standards state that the place of detention shall be visited regularly by the competent authority as distinct from the authorities directly in charge of the administration of the place of detention or imprisonment. Unfortunately, the situation in the United States falls far short of this standard.

15. On 11 February 1999, the European Parliament adopted a new resolution on this case insisting that Mr. Peltier be granted presidential executive clemency, that he be transferred to a hospital where he may receive appropriate medical treatment, and reiterating their call for an investigation into the judicial improprieties involved in his conviction.

16. On 10 December 1998, President Clinton signed an executive order for the implementation of international human rights treaties signed by the United States and about their obligations pursuant to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Racial Discrimination.

Conclusion

17. In light of this executive order and considering the situation of Mr. Peltier, our organization North South XXI calls upon the Commission to appoint the Special Rapporteur on torture and the Working Group on Arbitrary Detention to carry out a visit to the United States to study the United States administration of justice based on racial discrimination and to investigate the case of Leonard Peltier, a recognized indigenous human rights defender, as well as the cases of other political prisoners and the condition of detention of the 1.8 million prisoners in the United States, especially at the Marion Control Unit, Leavenworth Federal Penitentiary, SCI Greene, Pelican Bay State Prison, Florence Institution, among others, and to make a report to the next Commission session.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

GE.00-10980 (E)

The situation in Burkina Faso

The human rights situation in Burkina Faso has been a cause of concern since December 1998. On 17 April 1997, a case-file was submitted by the Mouvement Burkinabé des droits de l'homme et des peuples (MBDHP) to the African Commission on Human and People's Rights, based in Banjul (the Gambia), accusing the Government of serious human rights violations. The Commission has already instructed Burkina Faso to expedite its handling of crimes committed with impunity. While MBDHP was waiting for this instruction to be implemented by the Government of Burkina Faso, the human rights situation deteriorated abruptly with a series of murders, killings and shootings of children at public demonstrations against impunity. The victims were primary and secondary school pupils and students at higher educational establishments.

Nevertheless, the Fourth Republic took some positive steps in 1998 by signing

The Statute of the International Criminal Court;

The Ottawa Convention on Anti-Personnel Mines;

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both of which entered into force in New York in 1976).

The authoritarian attitude of the Fourth Republic in Burkina Faso has hardened because different social forces and strata have rejected the slow handling of criminal cases by the judicial system, the continuation of unpunished physical and economic crimes, violations of human rights and academic freedoms, repeated murders and killings and the judicial harassment of human rights workers and the leaders and militants of democratic mass organizations and political parties.

1. Murders and killings make the democratic process meaningless

On 13 December 1998, the journalist Norbert Zongo, known for the outspokenness and pertinence of his work, was murdered with his brother Ernest Zongo and his friends Blaise Ilbodo and Ablassé Nikiéma some 100 kilometres from Ouagadougou.

In his newspaper L'Indépendent, Norbert Zongo had published a weekly exposé of corruption at the highest levels of politics. The most scandalous abuses of power which he revealed included the affair of the Comptoir Burkinabé des métaux précieux ; the allotment and division of land for housing projects; the privatization of State corporations and industrial assets such as the national railway system, the water and electricity supply company and the national airline; and financial transactions between the fibres and textiles company and the oil-producing companies of the national agricultural credit union.

The use of figureheads, attempts to corner capital and shares and trafficking in precious stones and metals (gold, diamonds) are some of the abuses which Norbert Zongo exposed and which led to his untimely death.

David Ouédraogo, the driver of the younger brother of President Blaise Compaoré, was tortured to death on the premises of the Entente Council in Ouagadougou. His accomplices Hamidou Ilboudo and Adam Tiendrebéogo were tortured by being roasted over a fire like chickens. All because of a petty theft committed at the home of François Compaoré. That was sufficient justification for David Ouédraogo to be killed and his two accomplices to be burned and mutilated so badly that they have been left disabled. MBDHP and Norbert Zongo, backed up by Mr. Bénéwendé Sancara, exposed this crime committed by members of the President's bodyguard. One of the reasons for Norbert Zongo's murder was his determination to shed light on the case of David Ouédraogo and others.

The collective leadership of democratic mass organizations and political parties has taken up these cases in an intensified campaign against impunity in Burkina Faso.

2. The murder of Auguste Pépin Ouédraogo and Mamadou Koné and the wounding of three students from Toma

In 1999, Auguste Pépin Ouédraogo was murdered at a gendarmerie in Bobo-Dioulasso, 360 kilometres from Ouagadougou, and Mamadou Koné was murdered at a police station in Banfora, 450 kilometres from the capital.

Both men were abducted from their workplaces by officers of the national gendarmerie. Auguste Pépin Ouédraogo was bound hand and foot and flogged by four gendarmes until, badly injured, he was taken to hospital where he died as a result of the ill-treatment he had received. Mamadou Koné was arrested by the police in his neighbourhood, Banfora and taken to the police station, where he was shot in the back and the back of the neck.

The case of Pépin Ouédraogo will come to court in December 1999 and the perpetrators are likely to receive prison sentences ranging from two to five years. They will also have to pay damages in the region of 60 million CFA francs. No court date has been set for the Madadou Koné case.

On 3 January 1999, during demonstrations throughout the territory of Burkina Faso, three secondary school pupils from Toma were shot and wounded by a police officer who has hitherto escaped all repercussions of his action. Many police officers who have committed crimes continue to work as normal, including those responsible for the deaths of David Ouédraogo and Norbert Zongo. The three secondary school pupils from Toma are now disabled, since bullets grazed their vital organs (spinal cord, coccyx, liver).

3. Judicial harassment of human rights workers and violations of academic freedom

Since the intensification of the campaign against impunity in Burkina Faso following the murders of Norbert Zongo and his companions, the Fourth Republic presided over by Blaise Compaoré has stepped up judicial harassment of human rights workers, particularly militants and leaders of democratic mass organizations and political parties and their sympathizers. These organizations have rallied the population to their cause; in a protest against impunity, over 50,000 people marched peacefully through Ouagadougou on 27 November 1999.

On 13 December 1999, more than 200,000 people took to the streets of Ougadougou to demand greater openness regarding the Sapouy crimes and an end to impunity. Similar marches are being organized nationwide and are attracting many thousands of people.

The Compaoré regime is using the courts to halt these demonstrations and judicially harass human rights militants and members of the collective leadership.

Seizing on an appeal to the national armed forces by the collective leadership, which requested soldiers "not to fire on children any more", prosecutors for the Ouagadougou Regional Court and the National Security Court intend to indict the collective leadership for damaging national security and sowing dissent and insubordination in the army.

If found guilty of these charges, under the provisions of the Penal Code and the Information Code, the following persons could face a minimum of 20 years in prison or, at worst, execution by firing squad:

Halidou Ouédraogo, Chairman of MBDHP and UIDH and Chairman of the collective leadership;

Sagnon Tolé, Secretary-General of the Conféderation Générale du Travail du Burkina, Vice-Chairman of the collective leadership;

Norbert Tiendrébéogo, Vice-Chairman of the collective leadership and Chairman of the Front des Forces Sankaristes;

André Tribri, Chairman of the Union Générale des Etudiants Burkinabé (UGEB), Rapporteur of the collective leadership;

Sankara Bénéwendé, representative of the Union des Jeunes Avocats du Burkina, Rapporteur of the collective leadership ;

Jean-Claude Médah, President of the Burkina Faso Journalists Association, Rapporteur of the collective leadership;

Paulin Yaméogo, editor of San Fina magazine.

Following popular protests and pressure from the international and regional community, the charges have been reduced to inciting demoralization in the army, which is punishable under article 106 of the Penal Code and article 104 of the Information Code by between one and five years in prison. The trial has been set for 27 December 1999.

The collective leadership has endured daily death threats and official harassment. The denunciation of the headquarters agreement between the Government of Burkina Faso and the Inter-African Union for Human Rights on 31 March 1999 is another example of official intransigence.

Generally speaking the following situation applies in Burkina Faso:

Absence of an independent judiciary;

Chronic mishandling of murder and similar crimes and economic crimes;

Serious violations of human rights and academic freedoms;

Dysfunction of core State institutions.

We request the Commission on Human Rights:

1. To appoint a Rapporteur for Burkina Faso who would:

   Closely monitor the development of human rights in the country;

   Help to expedite the resolution of crimes for which the perpetrators have gone unpunished (according to the council of elders, 91 murders and similar crimes and 90 economic crimes);

   Take up the cases of David Ouédraogo, Norbert Zongo and others, in which justice has obviously been obstructed ;

   Request the reversal of judicial decisions against militants and members of the collective leadership of democratic mass organizations and political parties.

2. Report on all aspects of his work to the Commission on Human Rights.

The Government of Burkina Faso will probably say that these matters are being dealt with by the courts, that it respects the independence of the judiciary and that judges are provided with all necessary means to perform their work. These arguments are all bogus because the judiciary in Burkina Faso is not independent. A number of audit reports confirm this fact (such as those of the World Bank, the European Union, judicial officers' occupational groups and a forum).

The Government of Burkina Faso must respect the United Nations treaties and conventions which it has ratified, especially the two covenants which entered into force in New York in 1976.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

Functioning of the justice system in Burkina Faso

1. In the wake of the murder of the journalist Norbert Zongo, the Burkina Faso authorities, far from elucidating this crime, are protecting those responsible, who appear to be close to the Government, and taking repressive action against the grass-roots movement consisting of associations, trade unions and opposition forces working together with the Mouvement Burkinabé pour les Droits de l'Homme et des Peuples (MBDHP).

2. This repressive stance is eliminating the credibility built up by Burkina Faso with international public opinion and jeopardizing the achievements of the democratization process.

3. The group of democratic organizations, which has identified the criminals and perpetrators of political killings in Burkina Faso, demands that investigations and prosecutions should be carried to a conclusion. In reprisal, the members of this group, including the President of the Inter-African Union for Human Rights (UIDH), have been arrested and prosecuted for "breach of security" and "attempt to incite dissidence within the army". They face prison terms of one to five years.

4. The Burkina Faso system of justice must perform its function in accordance with the principles governing a State under the rule of law, which Burkina Faso claims to be. It must prosecute and punish the murderers of David Ouédrogo, Pepin Auguste Ouédraogo, Mamadou Koné and the members of the military who fired on civilians and children at Garengo (1995), Réo (1996) and Toma (1999), in order fully to involve the army in the democratization process.

5. The Commission on Human Rights must intercede to ensure the protection of activists of the Mouvement Burkinabé pour les Droits de l'Homme et des Peuples and the Inter-African Union for Human Rights, including its President, Halidou Ouédraogo, by demanding that the Burkina Faso system of justice deal equitably and independently with all the cases before it.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

MUNIA ABU-JAMAL SENTENCED TO DEATH

1. The black American journalist Abu-Jamal, sentenced to death in 1982, has just had his petition turned down by the Supreme Court of Pennsylvania.

2. Abu-Jamal has not had a fair trial. After being arrested following a gunfight with the police, to which there were no witnesses, and convicted following a summary investigation, he has just been tried by a court whose members are elected and who are closely linked to the Fraternal Order of Police, a very repressive organization that is particularly hostile to black American movements.

3. The Federal Supreme Court cannot try the case on its merits, as a last resort.

4. The Commission on Human Rights should intervene to save Munia Abu-Jamal, who has been sentenced to death for reasons that have nothing to do with respect for the law.

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RIGHTS OF THE CHILD

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

AMERICAN JUSTICE AND JUVENILE OFFENDERS

1. Juvenile delinquency in the United States has been on the decrease since 1993, after having been continuously on the increase since 1987. One of the reasons for the decrease in the number of cases of violent crime dealt with by the American courts (with 44 per cent fewer cases of homicide committed by minors) is that it has become more difficult to get hold of firearms since the adoption in 1995 of a federal law prohibiting minors from possessing handguns or ammunition.

2. Despite the official statistics, penal policy, which plays on the public's fears, is becoming more and more repressive towards minors. To improve his standing in the polls, the Governor of Texas, G.W. Bush, one of the candidates in the presidential elections in 2000, has overhauled the State's penal system: he has tripled the capacity of juvenile detention centres; minors can be tried in adult courts for serious offences; and convicted minors can be imprisoned alongside adults.

3. Between 1992 and 1995, 41 out of 50 States made judicial procedure for minors stricter. Twenty-four States have the death penalty for minors.

4. The case of Nathanial Abraham is instructive. He has been held for two years in a prison centre in Michigan, on charges of committing a crime. He was 11 years old at the time of the events and he is due to be tried by an adult court, where he could be sentenced to life imprisonment. In 1995 alone, Florida sent 7,000 minors to adult courts, though this had no impact on the rate of reoffending.

5. A working group on juvenile delinquency and ways to deal with it should be set up to study the situation of juvenile offenders in various countries, especially in the United States, and to propose appropriate solutions in accordance with the basic rights of the child and a good system of justice.

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INDIGENOUS ISSUES

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

RIGHTS OF INDIGENOUS PEOPLE

1. Despite progress within the United Nations, at both the national and international levels, efforts to restore all the rights of indigenous peoples and to adopt the draft declaration are taking a very long time. The appropriation of land by force, the expansion of private companies grabbing natural resources, the violation of basic rights - particularly the right to self-determination - and the plundering of their cultural heritage are the very problems indigenous people have endured for centuries!

2. Considerable progress in the concept of human rights, according to Western standards, has not been matched by progress in the rights of peoples. Can individuals enjoy the privileges of human rights when the rights of their people are being violated? To restore the basic rights of indigenous people and safeguard their cultural heritage cannot be likened to a charitable or folkloric undertaking. The colonial perception of indigenous peoples as barbarians and pagans who should submit to the rules of Western civilization persists in the concepts and various aspects of a supposedly modern way of thinking. The unbroken resistance of indigenous peoples and their rejection of the dominant thinking are signs of their desire to escape from the constraints imposed on them during centuries of policies that persist in one way or another and prove they existed.

3. By fighting the policy of assimilation and integration, indigenous people, like other exploited peoples, are endeavouring to come to terms with the demands of today's world. They are trying to build a society they can call their own and to approach the issue of modernity in the context of their way of life and according to their culture. The international community should be helping these peoples to build a society that matches their own concept of modernity and to develop their economies and political institutions to their full potential. This historic process is the shared responsibility of all.

4. The draft United Nations declaration on the rights of indigenous peoples would, if adopted, be a moral acknowledgement of the rights of these peoples and, at the same time, a condemnation of repression by the colonizers. But this declaration alone does not have the binding force to ensure the restoration of indigenous rights. The right to self-determination must be clearly and unambiguously established.

5. The Commission should therefore take all measures that may contribute to the advancement of indigenous peoples, including the following:

(a) Assert unambiguously the right to self-determination;

(b) Assert the right of indigenous people to live on their land, and their right to recover their lands and to establish political bodies of their own choosing there;

(c) Put an end to the policy of colonizing indigenous lands, the seizure of their natural resources, and plunder by the big multinationals and private companies;

(d) Put an end to all forms of assimilation and integration forced on indigenous populations by States. These practices, designed to weaken cultural identity, are one of the gravest dangers and violate the International Bill of Human Rights;

(e) Set up a programme whereby States undertake to guarantee the right to work of indigenous people - a third of whom are unemployed - in their respective territories;

(f) Ensure that all necessary political and legal measures are taken by the United Nations and, especially, the States concerned in fulfilment of obligations undertaken in treaties, agreements and arrangements with indigenous peoples;

(g) Establish a court within the United Nations to consider complaints by indigenous people against States or private companies which continue to ignore their rights. The judgements of this court should be enforced under United Nations supervision;

(h) Ensure that indigenous peoples have the means to protect their cultural identity and ethnic specificity and, to this end, provide generous subsidies for special programmes to promote indigenous languages and cultures. Such action should help foster one of the most important aspects of the world heritage: cultural diversity.

6. In view of the negative effects of cultural globalization, action in support of indigenous peoples is of fundamental importance. The international community has a duty to save cultures that are threatened with extinction. Diversity and pluralism are the foundations of freedom. This freedom cannot be guaranteed in a monolithic, totalitarian and globalized world. The Working Group on Indigenous Populations should study these programme guidelines and help in ensuring that the declaration on the rights of indigenous peoples is adopted urgently.

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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: ADAPTATION AND STRENGTHENING OF THE UNITED NATIONS MACHINERY FOR HUMAN RIGHTS

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

INTERNATIONAL COURT TO MONITOR ELECTIONS

1. Almost every State today claims to be democratic. The new form of legitimacy is apparently the "rule of law" following multi-party elections. In reality, this electoral "recycling" is nothing but a cover-up for the preservation of privileged oligarchies and traditional authoritarianism, notwithstanding articles 21, 22 and 25 of the 1966 International Covenant on Civil and Political Rights.

2. Despite the many irregularities and the cheating that distort elections, bogus "international observers" (often delegations of western celebrities acting in fact as mercenaries) play the role of sureties when the winners are favourably disposed towards the established international order. This type of behaviour is common in Africa.

3. In the face of these abuses of the right to vote, there is no legal, peaceful remedy available to the people. Their only choice is between rebellion and submission. "Humanitarian intervention" is unlawful, discriminatory and counter-productive.

4. One of the judicial remedies could be the establishment of an international court, along the lines of the International Court of Justice or the International Criminal Court, which would be competent to judge the legality of elections in each country at the request of nationals of the country or after itself initiating proceedings.

5. A working group should be set up to prepare a proposal for a "world democracy court", to use Professor Moncef Merzouki's term, which would have the task of demystifying elective pseudo-democracies for an international audience, thereby curtailing their existence.

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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement* submitted by the American Association of Jurists,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmetnal organization.

MILITARY MANOEUVRES IN VIEQUES, PUERTO RICO

I. The American Association of Jurists condemns and regrets the decision by the President of the United States of America, William J. Clinton, to accept the plan proposed by his Defence Secretary, William S. Cohen, that the United States Navy should continue the military manoeuvres of the Atlantic Fleet for at least a further five years in the island municipality of Vieques, Puerto Rico. No guarantee is offered that the Navy will withdraw once the period is up. It may be added that the broadest possible range of public opinion in Puerto Rican society has with one voice absolutely refused to allow another shot to be fired on the little island.

II. In 1941 the United States Navy expropriated more than 78 per cent of the territory of Vieques. Since then, its population has remained bogged down in a calamitous state of underdevelopment which, inter alia, has caused unemployment of over 60 per cent and serious environmental pollution of the air, water, land and subsoil with nitrites, lead, mercury, nitroglycerine, acetylene, uranium, napalm and many other pollutants which have given rise to an incidence of cancer 27 per cent higher than on the island of Puerto Rico. The poverty rate among the population of Vieques is an alarming 70 per cent.

III. Since the arrival of the United States Navy, its negligence has caused numerous accidents which in 1999 cost the life of a citizen of Vieques and injured another four persons; in 1998 ammunition from M-16 rifles struck lorries belonging to the municipality which were parked near a school; in 1993 five bombs of 500 pounds each were dropped in areas frequented by civilians; at the present time there are numerous unexploded munitions, bullets and bombs in various areas including the sea from which the majority of the inhabitants earn their daily living. Just to give an idea of the intensity of the operations taking place in Vieques, the population is less than 10,000 but up to 30,000 soldiers take part in the manoeuvres, while in only two weeks (October 1992) more than 20 tons of live explosives, including napalm, were dropped. Not satisfied with carrying out their own military manoeuvres in Vieques, the United States armed forces also rent the areas they occupy to other countries for military exercises.

IV. The Navy occupies the most fertile land, preventing it from being used for farming, as well as the best coastal areas, thus preventing them from being developed for tourism, with the further aggravation of the pollution caused. The shortest transport routes between Vieques and the island of Puerto Rico have been cordoned off by the Navy, which makes transport to Puerto Rico more difficult and more expensive, although that is where the inhabitants of Vieques have to go for basic services such as medical and hospital care and university education. Such are the Navy's pretensions that it has tried on many occasions to clear the island of its inhabitants and occupy it in its entirety.

V. The American Association of Jurists finds such behaviour and the facts briefly summarized here reprehensible and a violation of the most elementary human rights that the United States constantly claims to protect, such as:

(a) The right to self-determination, the economic, social and cultural development of peoples, the right to the sovereignty of peoples over their natural resources, the right to life, to health and a healthy environment in order to achieve better living conditions (Charter of the United Nations, Preamble, articles 1, 55 and 56, Chapters XI and XII; Vienna Declaration of 1993).

(b) The right to life, liberty and security of person, the right to protection against cruel, inhuman or degrading treatment, the right to the realization of the economic, social and cultural rights indispensable for an individual's dignity and the free development of his personality, the right to work, to just and favourable conditions of work and to protection against unemployment, the right to an adequate standard of health, living, well-being and housing, the right to education and the right to a social and international order in which the rights and freedoms proclaimed can be fully realized (Universal Declaration of Human Rights, articles 2, 3, 4, 22, 23, 25, 26 and 28).

(c) The right of self-determination, the right to economic, social and cultural development, the right of peoples to freely dispose of their natural wealth and resources and that a people should not be deprived of its own means of subsistence, these rights being specifically guaranteed to Non-Self-Governing and Trust Territories (International Covenant on Economic, Social and Cultural Rights, article 1, binding on the United States of America as from 8 September 1992).

(d) The duty of colonial powers to dismantle the military bases installed in colonial Territories and to refrain from establishing new ones since they constitute a major obstacle to the liberation of the people of the Territory and one of the most serious obstacles to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, the right of all peoples to freely dispose of their natural wealth and resources and the integrity of their national territory (United Nations General Assembly resolutions 2105 (XX), 2023 (XX) and 1514 (XV)).

(e) The right to live in a healthy environment and the right that States should promote the protection, preservation and improvement of the environment ("Protocol of San Salvador" to the American Convention on Human Rights, article 11 and the Rio Declaration on Environment and Development of 1992).

The American Association of Jurists therefore

1. Requests international cooperation and solidarity with the people of Puerto Rico in order to bring about the final withdrawal of all military personnel present.

2. Urges the Government of the United States of America to respect the desire clearly expressed by the people of Puerto Rico and to unconditionally vacate the island of

Vieques, put an end to the military exercises and manoeuvres of its armed forces on the island municipality of Vieques, Puerto Rico, return all occupied land to the people of Puerto Rico and decontaminate and clean up all land and water used in the military exercises and manoeuvres.

3. Further urges the Government of the United States of America to comply with the 18 resolutions and decisions adopted by the United Nations Special Committee on Decolonization in the case of Puerto Rico and respect the right of the people of Puerto Rico to self-determination and independence pursuant to General Assembly resolution 1514 (XV).

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 December 1999]

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* This written statement is issued, unedited, as received from the submitting non-governmental organization.

I. The United States of America is not party to a good many current international human rights agreements, among them the International Covenant on Economic, Social and Cultural Rights; the two Protocols to the International Covenant on Civil and Political Rights; the International Convention on the Suppression and Punishment of the Crime of *Apartheid*; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the Convention relating to the Status of Refugees; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the 1997 Ottawa Convention banning anti-personnel mines.

It did not vote for the establishment of an international criminal court although its nationals would be guaranteed impunity since the workings of the court would largely be subordinate to decisions of the Security Council.

Of more than 170 International Labour Organisation Conventions, the United States has acceded to only 12 and is not party to the main ones, including No. 87 on trade union freedom, No. 98 on the right to collective bargaining and No. 138 on the minimum age (child labour).

When it ratified the International Covenant on Civil and Political Rights it entered reservations to numerous articles, including article 6.5 prohibiting the application of the death penalty for crimes committed by persons below 18 years of age and, invoking freedom of expression, article 20 which prohibits propaganda for war and advocacy of national, racial or religious hatred. It is one of only two countries in the world (the other is Somalia) not to ratified the Convention on the Rights of the Child.

II. The United States of America does not consider itself to be bound by decisions of the International Court of Justice concerning it. Paraguayan citizen Angel Francisco Breard was executed there on 14 April 1998 although in a ruling dated 9 April the International Court of Justice had notified the United States that it should take all measures at its disposal to ensure that Breard would not be executed pending a final decision on the case by the Court. A similar case involved the German citizen Walter LaGrand.[1]

III. In 1994, James Grant, then Executive Director of UNICEF, introducing *The Progress of Nations 1994* at a press conference, said that the situation of children in United States of America was the worst in the entire industrialized world. Twenty per cent of American children live below the poverty line, while in other industrialized countries the proportion ranges between roughly 5 per cent in Western Europe and 10 per cent in Canada, Australia and the United Kingdom. It is also estimated that 3 million children a year in the United States are abandoned, ill-treated or suffer sexual violence, three times as many as in 1980.[2]

In her 1996 report,[3] the Special Rapporteur on the sale of children, child prostitution and child pornography quoted a report from the US Department of Health and Human Services which estimated that there were up to 300,000 child prostitutes on the streets of the United States. The same figure was quoted from a different source in UNICEF's *The Progress of*

Nations 1995. The Special Rapporteur repeated the figure in her 1997 report[4] on the mission she undertook to the United States in December 1996, adding that 22.7 per cent of American children under 18 lived below the poverty line.

Child labour, although not on the scale of some Third World countries, is widespread in secret and more-or-less secret workshops in New York, Los Angeles and other cities, and is commonplace in the countryside.

Since 1992, almost every state in the United States has passed laws allowing minors to be put on trial as adults. Several states have set 10 as the cut-off age, and Michigan has no limit at all. Over the past ten years, 12 people have been executed for crimes committed when they were minors. Another 70 or so who committed crimes while they were minors are in prison awaiting execution.[5]

IV. In late September 1999, with its seventy-sixth execution, United States broke its yearly execution "record", bringing to 576 the number of executions carried out since the death penalty was restored in 1976. Texas heads the list with 188 executions, 24 of them between January and September 1999.[6] By mid-December 1999 the year's executions numbered approximately 100, 32 of them in Texas alone.[7]

On 17 November 1999 the European Union withdrew from an initiative in the General Assembly supported by 72 countries calling for a moratorium on executions because of strong opposition from the United States and China.

V. The United States has 2 million people in prison (twice as many as ten years ago), giving it the largest prison population in the world in proportion to its total inhabitants. Private prisons (120, with 120,000 detainees) are doing excellent business at the expense of the rights, health and safety of those incarcerated within them.

To save money on prison construction, the Correction Corporation of America (CCA) is building prisons without watch towers; this also reduces the need for prison staff, who do not have to be assigned to the non-existent towers. Prisoner labour is used during construction. Another means of reducing costs is to reduce the quantity and quality of the food served and the medical care given to prisoners.

Treatment in prison is brutal, both in city prisons and on "work farms", real forced labour camps, such as the one in Silverdale, Tennessee, operated by CCA. In Texas, Arkansas and Louisiana prisoners are forced to work in the fields without payment. Sexual abuse of female detainees is commonplace.

It is common practice for prisoners to work for private companies for gross wages of around 5 dollars per hour (or about 2 dollars net, since deductions can amount to 80 per cent of wages), and large, well-known corporations do well out of the fact.[8]

The 13th amendment to the Constitution virtually admits as much, stating that neither slavery nor involuntary servitude shall exist within the United States "except as a punishment for crime whereof the party shall have been duly convicted".

VI. When it comes to suppressing social movements, the methods employed range from killings, as occurred with the "black panthers", to rigged trials such as that of Leonardo Peltier, who was sentenced to a long term of imprisonment, and Mumia Abu Jamal, who was condemned to death.

VII. Illegal immigrants against whom expulsion orders cannot be executed are kept in detention centres or prisons without any rights and in deplorable conditions, and can remain there indefinitely. Some 13,000 people are estimated to be in this kind of situation.[9] The Supreme Court has upheld a decision by the Court of Appeal affirming that such internees have no constitutional rights since they are not actually in the United States but are simply being held under the authority of the Immigration and Naturalization Service (INS).

VIII. Despite the existence of an international convention (to which the United States is not party) against the recruitment, use, financing and training of mercenaries, and despite the concern expressed by the General Assembly (Third Committee resolution dated 5 November 1998) about the use of mercenaries to violate human rights, the United States of America makes extensive use of mercenaries both domestically and on so-called peacekeeping missions in Croatia, Bosnia-Herzegovina and Kosovo.[10]

IX. The United States of America has officially acknowledged that experiments involving radioactive materials have been carried out on mental patients, pregnant women and ordinary citizens; it has also officially acknowledged that 400 black people were used for years as guinea pigs in medical experiments (anti-syphilis treatment was withheld so that the disease could be studied).

X. As for the social repercussions of America's "astonishing economic dynamism" (its domestic and foreign debts are sky-rocketing), one need do no more than quote John Sweeney, the President of AFL-CIO: "... these past few years in the United States, production has been up, and so have CEOs' earnings, but the workers haven't seen any effects on their payslips".[11]

Notes

[1] ICJ, case concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America), Order dated 9 April 1998, and ICJ, LaGrand case (Germany v. United States of America), Order dated 3 March 1999 and press communique 99/9 bis dated 5 March 1999.

[2] UNICEF, *The Progress of Nations 1994*.

[3] E/CN.4/1996/100, para. 35.

[4] E/CN.4/1997/95/Add.2.

[5] *Le Monde*, Paris, 14 November 1999, p.4 and *El Pais*, Madrid, 22 November 1999, p.35.

[6] Death Penalty Information Center (DPIC), Washington, September 1999.

[7] *El Pais*, Madrid, 10 December 1999, p.9.

[8] Daniel Burton-Rose, *The Celling of America, an inside look at the US prison industry* (Part IV), (Monroe (Maine) Common Courage Press, 1998). See also Christian Parenti, *Lockdown America, Police and Prisons in the Age of Crisis*, (Verso, London/New York, 1999).

[9] Human Rights Watch, E/CN.4/1998/NGO/50, para. 12. See also a note by Sylvie Kauffmann on the situation of illegal immigrants interned in the United States in *Le Monde*, Paris, 21 December 1999, p. 4.

[10] Report of the Special Rapporteur on mercenaries, E/CN.4/1999/11, para. 73. See also *El Pais*, Madrid, 12 November 1998. For other aspects of the human rights situation in the United States, see reports E/CN.4/1995/78/Add.1, E/CN.4/1999/68/Add.2 and E/CN.4/1999/58/Add.1 by the Special Rapporteurs on racial discrimination, extrajudicial executirions, violence against women, religious intolerance and torture.

[11] *Le Monde*, Paris, 2 December 1999, p.2.

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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE

Written statement submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31

[16 December 1999]

GE.00-10767 (E)

OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, ADOPTED BY THE GENERAL ASSEMBLY ON 6 OCTOBER 1999 (resolution 54/4)

1. At its 1999 session the General Assembly adopted the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The importance of a mechanism for the submission of complaints concerning violations of the provisions of the Convention was emphasized by the 1993 World Conference on Human Rights in the Vienna Declaration and Programme of Action and confirmed by the World Conference on Women held in Beijing in 1995 in its Platform for Action.

2. The American Association of Jurists (AAJ) welcomes this new mechanism, which will enable women to assert their rights at the international level, and hopes that speedy ratification by member States will enable it to come into force immediately.

3. At the same time, the AAJ wishes to make the following comments.

Entities responsible for violations of the provisions of the Convention

4. The Optional Protocol appears to consider as falling within its scope only violations of human rights committed by States. It thus excludes private individuals or institutions, States other than that exercising jurisdiction, international organizations and private international institutions or enterprises. However, article 2 (e) of the Convention provides that States parties undertake to "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise", while the Committee which supervises the implementation of the Convention (the Committee on the Elimination of Discrimination against Women) has stated that "discrimination under the Convention is not restricted to action by or on behalf of Governments", quoting articles 2 (e), 2 (f) and 5 in support of its assertion. It has also stated that, under international law, States might also be responsible for private acts if they failed to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation (general recommendation No. 19 of the Committee on the Elimination of Discrimination against Women (1992), para. 9).

5. The restrictive scope of the Protocol with regard to violations of the principles of the Convention fails to take into account the new tendencies in legal doctrine and case law on the subject. Since Nuremberg, and more recently with the establishment of tribunals for the prosecution of crimes against human rights committed in the territories of the former Yugoslavia or in Rwanda, and with the approval of a Statute for an International Criminal Court, the principle of trial of individuals by international courts for violations of human rights connected with crimes and offences deemed to be such in international law (possible examples being the systematic rape of women during a war, trafficking in women for purposes of prostitution and pornography and the international trafficking of individuals for forced labour) is fully accepted.

The Protocol states that the complainant must be under the jurisdiction of the State against which the complaint is made

6. The AAJ considers that this clause is anachronic for the reasons given below.

7. Present-day international law confers on individuals the status of subjects of international law. This being the case, the general principle is that individuals must, in accordance with the conditions laid down by law, be able to intervene before the competent bodies when their rights are infringed, not only by the State under whose jurisdiction they are, but by any State and any legal or physical person. This is reflected in the regional instruments on the protection of human rights, none of which contain the requirement that a complainant must be under the jurisdiction of the State against which the complaint is made.

8. The text of article 1 of the First Optional Protocol to the International Covenant on Civil and Political Rights has given rise to numerous problems within the Human Rights Committee, precisely because that text restricts the right of complaint concerning violations committed by a State to "individuals subject to its jurisdiction".

9. In the exercise of its quasi-jurisdictional function, the Human Rights Committee has encountered the problem that, if it applied article 2 of the Covenant and article 1 of the first Optional Protocol to the letter, it would be depriving of protection individuals resorting to it to complain of serious violations of their civil and political rights committed by other States to the jurisdiction of which they are not subject.

The Human Rights Committee has very aptly said that "It would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory." [1]

10. In 1993 the Human Rights Committee returned to the question in connection with the events in the former Yugoslavia. During the consideration of the report of the Federal Republic of Yugoslavia (Serbia and Montenegro) one member of the Committee stated that "States were responsible for ensuring respect for human rights when their representatives were implicated and when their acts affected human beings, even outside their national territory."[2]

11. In 1995, in its comments on the report of the United States of America, the Human Rights Committee stated: "The Committee does not share the view expressed by the Government that the Covenant lacks extraterritorial reach under all circumstances. Such a view is contrary to the consistent interpretation of the Committee on this subject, that, in special circumstances, persons may fall under the subject-matter jurisdiction of a State party even when outside that State's territory".[3]

12. The obligation to respect civil and political rights is a universal passive obligation, and any violation thereof justifies the intervention of the international community through its competent bodies. For instance, the systematic violation of article 11 of the Convention on the Elimination of All Forms of Discrimination against Women by a transnational enterprise which infringes the regulations of a State in which it has a subsidiary is certainly creating liability on the part of the State in which the infringement is committed, but it may also, in some cases, create liability on the part of the State in which the headquarters of the enterprise is located.[4]

13. The requirement that the complainant must be subject to the jurisdiction of the State against which the complaint is made will be a major obstacle which will hamper the submission

of complaints by victims of international trafficking in women for purposes of sexual exploitation (women who are taken from one country to another to be sexually exploited and are subsequently deported from the latter country will be unable to file complaints against the latter State because they will not be subject to its jurisdiction). How, then, can the victims be deprived of the right to address themselves to the competent bodies because they are not "subjects" of the State committing the violation?

14. To overcome this shortcoming in the Protocol the Committee on the Elimination of Discrimination against Women will have to engage in a process of interpretation, as the Human Rights Committee has done.

15. The approval of the Optional Protocol is an important step forward; but other steps will have to be taken to adapt the Convention on the Elimination of All Forms of Discrimination against Women to the needs of the present-day world.

16. The Convention contains no standards relating to the protection of the physical integrity, the freedom and the security of women engaged in prostitution or to the economic and social rights of women who are heads of lone-parent families; or to the protection of women migrant workers. Nor have the principles laid down in the Declaration on the Elimination of Violence against Women been incorporated in it.

17. As regards work, the Convention accepts the traditional definition of work as "employment in the structured sector". It thus excludes millions of women who are struggling to subsist in the informal sector of the economy. The enormous contribution which women make to the economy through their unpaid labour, in both the field of biological and social reproduction and in that of production, within the community and within society, only deserves a mention in article 14, paragraph 1, which is in any case restricted to rural areas.

Finally, the AAJ wishes to recall the absence from the Convention of any reference to the right of women to rest, to a reasonable working day and to the enjoyment of leisure time.

Notes

[1] Human Rights Committee, selected decisions under the Optional Protocol (CCPR/C/OP/1), New York, United Nations, 1988, communications 52/1979 and 56/1979.

[2] Official Records of the Human Rights Committee 1992/93, United Nations, New York and Geneva, 1996, vol. I, p. 152, para. 23.

[3] Human Rights Committee, fifty-third session, CCPR/C/79/Add.50, 7 April 1995.

[4] Rigaux, François, "Les sociétés transnationales" in Bedjaoui, Mohammed, Droit international-Bilan et perspectives, Title I: "Le sujets du droit international".

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RIGHTS OF THE CHILD

Written statement* submitted by the American Association of Jurists,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

Draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

I. The working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography appears to be at a standstill as a result of the discussion on the coverage of its mandate.

II. The American Association of Jurists (AAJ) pointed out at the first session of the Working Group in November 1994 that its mandate derived from paragraph 17 of resolution 1994/90, which refers to guidelines for a possible draft optional protocol ... on the sale of children, child prostitution and child pornography, as well as the basic measures needed for their prevention and eradication. It took the view that the mandate had to be interpreted within the whole context of the Commission's resolution, which mentioned, inter alia, the Vienna Declaration and Programme of Action, in which reference is made to the sale of children and their organs (Vienna Declaration and Programme of Action, I.21).

III. The AAJ went on to point out that the Group's mandate was wide-ranging, since it had to concern itself with the sale of children whatever the purpose, that is to say, whether it was for sexual or economic exploitation, for the sale of their organs or for their illegal adoption, and also obviously had to deal with child pornography and the basic measures for the prevention and eradication of these offences. In the opinion of the AAJ, it could not be maintained that the Working Group's mandate did not include fraudulent adoption and the traffic in organs.

IV. This matter had not been decided and in the Group's debates there were still States that wanted to include both subjects and other States that were opposed. It was even maintained, as an argument for not including the traffic in organs, that it had not been proved that such a traffic existed. However, there are many reasons for asserting that this subject cannot be omitted: legislation in many countries treats the sale of organs as a criminal offence; the Assembly of the World Health Organization approved in May 1989 a resolution (WHA42.5) on the prevention of the sale of human organs for transplantation, which specifically referred to children and other vulnerable groups; in 1991 the same Organization approved Guiding Principles on Human Organ Transplantation; and in 1993 the European Parliament approved a resolution on prohibiting trade in transplant organs.

V. A report of the Secretary-General of the United Nations in 1995 entitled "Organ Transplant" (E/CN.4/Sub.2/AC.2/1995/6), which was prepared for the Working Group on Contemporary Forms of Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, contained information provided by the United Nations Office at Vienna, which is quoted "in extenso" below. After pointing out that, in its resolution 3/2 entitled "International Traffic in Minors", the Commission on Crime Prevention and Criminal Justice, based in Vienna, had decided that the international traffic in minors should be considered in the context of the discussion of the question of organized transnational crime, the statement went on to make the following points.

"Furthermore, the Secretary-General in his report on the impact of organized criminal activities upon society at large (E/CN.15/1993/3) noted that at present no country was able to meet the demand for organs adequately and waiting lists were growing at a faster rate than the

supply. For instance, an estimated 85 per cent of the patients accepted for dialysis in Ireland received transplants in the first year, whereas in the United States only about 25 per cent of such cases resulted in transplants and in Japan the figure was less than 10 per cent. In the United States alone, statistics indicated that as of June 1991, 24,000 people were on waiting-lists for transplants. In Australia, the number of people requiring kidney transplants was about 2,000 at the present time, with about 400 transplants performed each year. The average waiting time for such a transplant was three years. This was a situation which organized crime was bound to exploit, as resort to exploitative and criminal practice could generate high profits where the number of available organs was insufficient. The Director of the Australian Institute of Criminology was quoted as saying, 'Not surprisingly, a black market ... has developed in which organs fetch high prices'." The report from the United Nations Office at Vienna continues: "The large number of destitute and homeless persons, including children, found in urban areas, particularly in developing countries, provide a source of such transplant organs. The black market is bound to grow as technological advances extend the preservation of organs after removal, so that transport can be provided over long distances." In any event, even if such a traffic did not actually exist, it would not therefore cease to be a crime. It is as if a country where no murders were committed were to delete the corresponding crime from its penal code.

VI. At the meeting of the Working Group in February 1997, the AAJ reiterated its view that the criminal activities with which the draft optional protocol is concerned, in particular the international traffic in children, whatever its purpose, and sex tourism involving minors, should be classified as international crimes, firstly, because the iter criminis is normally cross-frontier and, secondly, because the offending conduct violates legal assets recognized by the international community as being fundamental, such as the life, physical well-being and dignity of the human person. More specifically, the AAJ maintained that the draft optional protocol should include the following offences, which should be classified as international crimes:

(a) The traffic in and/or sale of children, particularly for their economic or sexual exploitation, for their unlawful adoption or for purposes of removing from them organs, tissues or body material;

(b) Promoting or facilitating the prostitution or corruption of children;

(c) Using children for performances or the production of pornographic objects or visual or auditory material.

The expression "traffic in and/or sale" of children has been employed, because what characterizes the unlawful act is not the existence of pecuniary compensation, but the cession of a minor to a third party by those who have the legal care of the child, or the appropriation of a minor by a third party without the consent of the child's legal guardians, for purposes of economic or sexual exploitation, unlawful adoption or the removal of organs, tissues or body material. Accordingly, the AAJ proposed to the Working Group that the words "traffic in and/or" should be added before the word "sale", or in place of traffic, the word "trade".

With regard to the offence of promoting, facilitating or organizing child prostitution, the AAJ suggested to the Group that in the expression "performance of sexual acts" by the child

the words "or sexually significant" should be inserted before "acts", so that the offence would include acts that some national laws do not regard as sexual acts, but whose sexual significance is obvious and which produce serious damage to the child's psychological health.

VII. The American Association of Jurists also insisted that it should be made clear in the draft text that this offence, as in the case of child pornography, remained as such even though there was real or presumed consent on the part of the child, and even when he or she had reached the age of sexual consent according to the respective national legislation in force.

VIII. The American Assocation of Jurists also stated that the economic exploitation of children must be understood as being work by children carried out in violation of the International Labour Conventions, including forced labour and, in particular, those conventions that apply specifically to children, such as ILO Minimum Age Convention (No. 138).

IX. The American Association of Jurists argued in favour of the inclusion of the two purposes in the traffic of children that encountered most resistance in the Working Group: unlawful adoption and the extraction of organs, tissues or body material.

The American Association of Jurists considers it essential that the Commission on Human Rights should at this session adopt a resolution specifying that the working group's mandate covers the sale of or trade in children for whatever purpose, including unlawful adoption and traffic in organs, tissues or body material, so that the work of the group can progress and achieve its objective of a draft optional protocol.

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